

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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| AMERICAN WATER WORKS COMPANY, |] | Reply To Responses To |
| a/k/a AMERICAN WATER WORKS SERVICE |] | Motion To Intervene |
| COMPANY, INC., and its subsidiaries, |] | |
| Petitioner/Cross Respondent, |] | Nos. 14-2703 |
| |] | and 14-2971 |
| v. |] | |
| |] | |
| NATIONAL LABOR RELATIONS BOARD, |] | No. NLRB-1:29-CA-030676 |
| Respondent/Cross-Petitioner, |] | |
| |] | |
| and |] | |
| |] | |
| UTILITY WORKERS UNION OF AMERICA, |] | |
| AFL-CIO, |] | |
| Intervening Respondent. |] | |

**REPLY OF UTILITY WORKERS UNION OF
AMERICA, AFL-CIO, SYSTEM LOCAL NO. 537 TO
RESPONSES OF NATIONAL LABOR RELATIONS
BOARD AND UTILITY WORKERS UNION OF AMERICA,
AFL-CIO TO MOTION FOR PERMISSION TO INTERVENE**

AND NOW, comes Utility Workers Union of America, AFL-CIO, System Local 537 (hereinafter “Local 537”) by its attorneys, Michael I. Leonard, Esq., and Samuel J. Pasquarelli, Esq., and file the within Reply to Responses To Motion For Permission To Intervene, setting forth in support thereof the following:

1. By decision dated July 31, 2014, the National Labor Relations Board (“NLRB”) found that the American Water Works Company, Inc., a/k/a American Water Works Service Company, Inc. (hereinafter “the American Companies”) violated the terms of the National Labor Relations Act when it unilaterally implemented certain terms and conditions of employment and it ordered the American Companies to rescind the aforesaid unilateral implementation, to

reinstate the insurance and pension plans and agreements that were in effect as of July 31, 2010 and to make whole all employees who suffered any losses as the result of said implementation.

2. The action in this Court filed at No. 14-2703 was filed by the American Companies to obtain a review of the decision of the NLRB at No. 29-CA-030676, dated July 31, 2014 as aforesaid.

3. The Utility Workers Union of America, AFL-CIO (“the UWUA”), a party to the proceedings before the NLRB, filed a Petition To Intervene in these proceedings, the prayer of which petition was granted by the Court.

4. By an agreement dated October 13, 2014, the American Companies, on behalf of their subsidiaries, and the UWUA and the other national unions on behalf of their local unions, entered into a settlement agreement regarding the issues outstanding in the aforesaid unfair labor practice charge. A copy of said agreement was attached as Exhibit A to Local 537’s Motion For Permission To Intervene in these proceedings.

5. It was announced by the UWUA on October 31, 2014 that the settlement agreement attached as Exhibit A was approved by virtue of mail balloting.

6. Local 537 asserted that balloting by mail violated the aforesaid settlement agreement for the reasons set forth in its Motion For Permission To Intervene and on November 17, 2014, it filed said motion with this Honorable Court.

7. By order dated September 23, 2014, this Honorable Court had previously directed that, as a result of the possibility that this matter may be settled “. . . all proceedings in his appeal are **STAYED** pending further court order. Counsel . . . is directed to make a telephonic Status Report to the Settlement Conference Office on November 21, 2014. . . . This requirement may be

satisfied by filing a motion under Fed. R. App. P. 42(b) to dismiss the appeal.” (emphasis in original).

8. By order dated November 24, 2014, this Honorable Court gave the UWUA, the NLRB and the American Companies until December 4, 2014, to file a response to the Motion For Permission To Intervene.

9. On November 25, 2014, the NLRB filed its response to the Motion For Permission To Intervene and on the same day, the UWUA filed its response to the Motion For Permission To Intervene. The UWUA adopted the response filed by the NLRB as its response.

10. On November 25, 2014, the NLRB, the UWUA and the American Companies also filed their Joint Motion For Dismissal, seeking the dismissal of the proceedings previously filed by them in this Court at Nos. 14-2703 and 14-2971, alleging that they had settled the underlying proceedings.

11. Pursuant to the Federal Rules of Appellate Procedure, Local 537 is permitted to file a reply to the joint responses of the NLRB and the UWUA and for the reasons set forth below, Local 537 respectfully requests your Honorable Court to grant the Motion For Permission To Intervene heretofore filed by it.

12. In Paragraphs 3 and 4 of its Response to Local 537’s Motion For Permission To Intervene, the NLRB asserts that intervention ordinarily should occur in the proceedings below and it asserts that intervention on the appellate level is only permitted in exceptional cases. While Local 537 does not dispute these general assertions, for the reasons set forth hereinafter, Local 537 asserts that this is a case where appellate intervention is warranted.

13. In Paragraph 5 of its Response, the NLRB asserts that Local 537 did not intervene in the proceedings conducted by the NLRB and therefore it should be barred from intervening

now. Local 537 did not intervene in the proceedings conducted by the NLRB because there was no need to do so. At that level, the NLRB and the UWUA were properly representing the interests of all aggrieved union members, including the members of Local 537 and they did so successfully, in that the Administrative Law Judge and the National Labor Relations Board found that the American Companies had violated the National Labor Relations Act. It was only after the American Companies filed their Petition to Review the decision of the NLRB and after the NLRB filed its Petition For Enforcement that the facts giving rise to the need to request intervention initially arose.

14. The American Companies filed their Petition For Review on August 14, 2014 and the NLRB filed its Petition For Enforcement on September 5, 2014.

15. The settlement agreement that is the genesis of Local 537's Motion For Permission To Intervene was not even discussed with Local 537 and the other local unions until October 9, 2014, it was not signed until October 13, 2014 and it was not announced by the UWUA as "approved" until October 31, 2014, and as a result, the contention of the NLRB in Paragraph 7 of its Response that the Motion For Permission To Intervene is untimely because it was filed on November 17, 2014, which is more than 30 days from either August 14, 2014 or September 5, 2014, is incorrect. This contention is incorrect because it misapprehends the fact that until October 13, 2014 (or more accurately until October 31, 2014), there was no need or basis to consider filing a Motion For Permission To Intervene. Additionally, the Response of the NLRB misapprehends the fact that a Motion To Intervene which is made for the first time on appeal is generally made, as occurred in this case, to cure a perceived failing that occurred for the first time after the appeal has been taken.

16. In Paragraph 6 of its Response, the NLRB alleges that the interests of Local 537 were adequately represented by it and the UWUA in proceedings before the National Labor Relations Board, therefore no basis for intervention exists. While it is correct that the interests of Local 537 were adequately represented in proceedings before the NLRB, it is alleged by Local 537 in its Motion For Permission To Intervene that more than 30 days after the appeals in this matter were taken to this Court, the UWUA for the first time commenced failing to adequately represent the interests of Local 537 and other local unions by entering into a settlement agreement that contained specific language affording all local unions the right to vote on whether or not to approve the settlement agreement and which contained specific language as to how the approval process was to be conducted and then conducting an approval process in direct violation of that very agreement.

17. In Footnote 3 of its Response, the NLRB states that if Local 537 is permitted to intervene, it will only reiterate the arguments that could be made on appeal by the NLRB and the UWUA. This assertion is not correct since if it is permitted to intervene, Local 537 will assert to this Honorable Court that this matter is not settled and it will assert that this Honorable Court should decide the matter on its merits. The reason that Local 537 desires to intervene is to establish that this matter is not settled and to be afforded the opportunity to pursue the matter on its merits since it appears that both the UWUA and the NLRB are of the opinion that the matter is settled and that they do not want to pursue it on the merits.

18. Since the NLRB, the UWUA and the American Companies have jointly filed a Motion To Dismiss these proceedings, it is submitted that the only way this matter can be heard on its merits is if Local 537 is permitted to intervene and present argument on the merits to the

Court since the NLRB and the UWUA have indicated, by filing a Motion To Dismiss these proceedings, that they are not interested in proceeding on the merits.

19. It is submitted by Local 537, for the reasons set forth herein and its Motion For Permission To Intervene, that there are exceptional circumstances to permit intervention, since the seminal issue in the Motion For Permission To Intervene is whether or not the very agreement that the UWUA, the NLRB and the American Companies rely upon to justify settlement of this matter and dismissal of these proceedings on the merits has itself been violated by the UWUA. It is further submitted that only by allowing Local 537 to intervene can this issue be resolved.

20. In its Response, the UWUA states that Local 537 has misstated the facts in this case. In addition to categorically denying that assertion, Local 537 points out that the UWUA made only a general assertion, unsupported by specific allegations.

WHEREFORE, Local 537 respectfully requests your Honorable Court to grant its Motion For Permission To Intervene.

Dated: November 25, 2014

Respectfully submitted,

LEONARD LAW OFFICES

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he did, on November 25, 2014, file a true copy of the Reply of Utility Workers Union of America, AFL-CIO, System Local No. 537 to the Joint Response of the National Labor Relations Board and the Utility Workers Union of America, AFL-CIO to the Motion for Intervention heretofore filed by Utility Workers Union of America, AFL-CIO, System Local No. 537 electronically with the United States Court of Appeals for the Seventh Circuit using its ECF system, by which electronic notification of the filing will be sent to all counsel of record.

Dated: November 25, 2014

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